NPT/CONF.2015/PC.III/WP.13

Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

25 March 2014

Original: English

Third session
New York, 28 April-9 May 2014

Exercise of the right of withdrawal contained in article X

Working paper submitted by the members of the Non-Proliferation and Disarmament Initiative (Australia, Canada, Chile, Germany, Japan, Mexico, Nigeria, the Netherlands, the Philippines, Poland, Turkey and the United Arab Emirates)

1. The Non-Proliferation and Disarmament Initiative states at the outset that seeking consensus regarding recommendations concerning the exercise of the right of withdrawal, which article X confers on States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, is eminently political in nature, not to underestimate its legal dimension.

2. As regards the legal dimension, the Non-Proliferation and Disarmament Initiative reaffirms that article X cannot be considered in isolation from the remaining provisions of the Non-Proliferation Treaty. The Treaty is a normative corpus with a crucial purpose: to contribute to the maintenance of international peace and security and thus satisfy the security interests of all its States parties. Furthermore, the Non-Proliferation and Disarmament Initiative underlines that the Treaty is widely recognized as a cornerstone of international security.

3. Therefore, the integrity and universality of the Non-Proliferation Treaty must be maintained. To this end, it is important to take a holistic approach, both to encourage parties to remain in the Treaty and to discourage them from withdrawing. In order to encourage parties to remain and, for that matter, to discourage them to withdraw from the Treaty, the importance of the integrity and universality of the Treaty should be re-emphasized. Furthermore, in this context, tangible progress needs to be made in the implementation of the past commitments made within the framework of the Treaty, in particular the 2010 action plan, including nuclear disarmament, the negative security assurances, the peaceful uses of nuclear energy and a Middle East zone free of weapons of mass destruction and their delivery vehicles.

4. The Non-Proliferation and Disarmament Initiative notes that article X provides States parties with the right to withdraw from the Treaty. It also gives them the possibility of deciding that extraordinary events related to the subject matter of the

14-27640 (E) 010414

Please recycle

Treaty have jeopardized the supreme interests of the State party which sees a need to withdraw.

5. The Non-Proliferation and Disarmament Initiative underlines that the process to exercise the right of withdrawal is described in the Treaty. Article X provides that the withdrawing State shall give notice to all other parties to the Treaty and to the Security Council three months in advance. In addition, this notice must provide a description of reasons for withdrawal, which shall include a statement of the extraordinary events the withdrawing State regards as having jeopardized its supreme interests of security.

6. The Non-Proliferation and Disarmament Initiative believes that the discussion on strengthening the process to exercise article X should increase emphasis on the legitimate security interests of all the other States parties in the Non-Proliferation Treaty. The Non-Proliferation and Disarmament Initiative believes that the withdrawal of any State party becomes an extremely significant event for all the States parties remaining in the Treaty: universal adherence to the Treaty enhances its value as an instrument of collective security; lack of universal adherence diminishes that value. And since withdrawal from the Treaty is an extremely significant political event, it must also be given extremely significant attention and care by the States parties remaining in the Treaty.

7. The Non-Proliferation and Disarmament Initiative recognizes that withdrawal is a right consistent with the law of treaties. The motivation underpinning the effort to strengthen the process to exercise this right is not to abolish it, but to safeguard the interests of the parties that stay in the Non-Proliferation Treaty: their interests are no less supreme than those of the withdrawing State. Rights, whether individual or collective, are meaningful only through interaction with the rights of others. If the Treaty is really a cornerstone of international security, we should regard any withdrawal from it as a serious political action which, in addition to diminishing the security of the other States parties, may have a potentially disastrous impact on the security of all. States parties are entitled to withdraw, but all States parties are entitled to undiminished security.

8. The Non-Proliferation and Disarmament Initiative underlines further the role given to the Security Council by the Treaty itself: article X requires the withdrawing party to give notice to the Council because such withdrawal constitutes an extraordinary event relevant to international security. Pursuant to Article 24 of the Charter of the United Nations, in order to ensure prompt and effective action by the United Nations, its Members confer on the Council primary responsibility for the maintenance of international peace and security. The Council should not remain silent after a withdrawal from the Non-Proliferation Treaty: under the Charter, it will be primarily responsible for determining whether that withdrawal constitutes a threat to international peace and security.

9. The Non-Proliferation and Disarmament Initiative recalls that, in the discussions on the basic principles on the regulation of the Non-Proliferation Treaty's withdrawal provisions at the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, one principle was derived from article 71 of the Vienna Convention on the Law of Treaties: under international customary law a State continues to be responsible for any violation of its legal obligations committed prior to its withdrawal from a treaty.

10. The Non-Proliferation and Disarmament Initiative firmly believes that the formulation of principles regarding the exercise of the right of withdrawal by a State and to protect the legitimate interests of all the other States parties does not constitute an amendment of the Treaty. Nevertheless, the Review Conference has authority to address specifically what might be done to strengthen the implementation of the provisions of the Non-Proliferation Treaty using the mandate to look forward decided upon at the 1995 Review and Extension Conference. The Initiative proposes to achieve such regulation within the framework of the Treaty and under the authority of the Review Conference.

11. The proposal below aims to preserve the integrity of the non-proliferation regime, the effectiveness of safeguards and the rights of the States parties remaining in the Non-Proliferation Treaty. Those States — bilaterally or through membership in international organizations such as the International Atomic Energy Agency (IAEA) — may have engaged in cooperation under articles III and IV of the Treaty and may also, in good faith, have transferred materials, equipment and technology to a withdrawing State. It is vital that mechanisms remain in place on such items to ensure that they are not diverted to weapons programmes.

Principles regarding the exercise of the right of withdrawal

Mindful that withdrawal pursuant to article X of the Non-Proliferation Treaty may pose threats to international peace and security, and

Acknowledging that such threats are to be assessed — and eventually remedied — by the Security Council in accordance with the Charter of the United Nations,

The exercise of the right of withdrawal under article X of the Non-Proliferation Treaty should be governed by the following principles:

A. Withdrawal is a right for States parties under article X of the Non-Proliferation Treaty. Article X subjects this right to conditions and a time framework. Accordingly, the right to withdrawal can be exercised only in the face of extraordinary events related to subject matter of the Treaty and the withdrawing State party must give notice of such withdrawal to all other parties in the Treaty and to the Security Council three months in advance. Such notice must include a statement of the extraordinary events the withdrawing State regards as having jeopardized its supreme interests.

B. The right of withdrawal is governed by the provisions of the Non-Proliferation Treaty and other relevant international law such as the Vienna Convention on the Law of Treaties. Under international law, a withdrawing party is still liable for violations of the Treaty perpetrated prior to the notification of withdrawal. Furthermore, withdrawal should not affect any right, obligation or legal situation between the withdrawing State and each of the other States parties created through the implementation of the Treaty prior to withdrawal, including those related to IAEA safeguards.

C. Recalling the Non-Proliferation Treaty's standing as a cornerstone of international security, depositories and States parties should undertake consultations and conduct every diplomatic effort to persuade the withdrawing State to reconsider its decision. In doing so, States parties should also address the legitimate security needs of the withdrawing party. Diplomatic initiatives at the regional level should be encouraged and supported.

D. Nuclear materials, equipment and technology acquired by a State under article IV prior to withdrawal must remain under IAEA safeguards or fall-back safeguards even after withdrawal.

E. Nuclear supplying States parties are encouraged to exercise their sovereign right — in accordance with international law and their national legislation — to incorporate dismantling and/or return clauses or fall-back safeguards in the event of withdrawal, as appropriate, in contracts or any other arrangement concluded with other States parties. Nuclear supplying States parties are invited to adopt standard clauses for the dismantling and/or return of materials, equipment and other relevant goods from a withdrawing party.